

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR
TRIPURA MIZORAM AND ARUNACHAL PRADESH)

CIVIL RULE NO. 1439/96

K.Kumardhan Singh
Son of Late K.Gaur Babu Singh
Village & P.O.Pallor Bond,
District Cachar, Assam.

.. Petitioner

- Versus -

1. Union of India, represented
by the Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi, 110001.

2. Secretary to the Govt. of India
Ministry of Personnel, Public Grievances
& Pension, New Delhi

3. Commissioner,
Linguistic Minorities in India
Govt. of India, 40 Amarnath Jha
Marg. Allahabad 211002

4. Assistant Commissioner
Linguistic Minorities of India
Govt. of India, 67, Bentinck Street
4th Floor, West Wing, Calcutta 700069

5. State of Manipur, represented
by the Chief Secretary, Govt. of
Manipur, Imphal.

6. State of Assam, represented by
the Chief Secretary, Govt. of Assam,
Dispur, Guwahati.

7. State of Tripura, represented by
the Chief Secretary, Govt. of Tripura
Agartala.

8. Registrar General & Census
Commissioner for India, Ministry
of Home Affairs Govt. of India, New Delhi.

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9. Manipuri Language Protection
Committee, represented by President,
Manipuri Boys Hostel, Bark Road, Silchar

.. Respondents

For the Petitioner. : Mr B.K.Das,
Mr P.Choudhury
Mr.P.Katanier
Mr.D.Majumdar
Mr P.K.Roy
Advocates.

For the Respondents Mr R.P.Kakati,
Mr B.L.Singh,
Mr B.Banerjee,
Mr M.Singh,
Mr K.N.Choudhury,
Advocates.

CIVIL RULE NO. 4499/96

K.Kumardhan Singh
Son of Late K.Gaur Baba Singh
Village & P.O.Pallor Bond
Dist.Cachar, Assam

.. Petitioner

- Versus -

1. Union of India, represented by the
Secretary to the Govt. of India,
Ministry of Personnel, Public
Grievances & Pension, New Delhi
2. State of Tripura, represented by
the Chief Secretary to the Govt. of
Tripura, Agartala,
3. Commission for other Backward Classes
Govt. of Tripura, represented by the
Member, Secretary, Agartala,
4. State of Manipur, represented by
the Chief Secretary, Govt. of Manipur
Imphal.

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5. Manipur Language Protection Committee
represented by the General Secretary
Manipur Boys Hostel, Park Road, Silchar

.. Respondents

For the Petitioner : Mr B.K.Das,
Mr P.Choudhury
Mr P.Khatanier,
Mr D.Majumdar,
Mr.P.K.Roy,
Advocates.

For the Respondents : Mr.B.L.Singh,
No.5 Advocate.

Govt.Advocate, Tripura Mr J.P.Bhattacharjee,

Date of Judgment : 9.4.99

B E F O R E

THE HON'BLE MR JUSTICE A.K.PATNAIK
THE HON'BLE MR JUSTICE D.BISWAS

JUDGMENT AND ORDER

These two writ petitions are public interest litigations filed by the petitioner who belongs to ^{the} Manipuri community and speaks the Manipuri Language. The relevant facts briefly are that on 16.11.92, the judgment of the Supreme Court in Indra Sawhney Vs Union of India was delivered. B.P.Jeevan Reddy, J delivering the majority judgment held in Paragraph 117 of the said judgment as reported in AIR 1993 SC 477 that there ought to be permanent body in the nature of Commission or Tribunal to which a complaint of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other backward classes could be made and which could tender its advice to the Government, and accordingly directed that such body be constituted both at the Central level and the State level. Pursuant to the said directions of the Supreme Court, the Govt.

of Tripura in the department of Welfare and Scheduled Caste issued a notification dated 18th September, 1993 constituting a Commission for other Backward Classes (for short the Commission). The Commission was to examine the requests for inclusion of any class of citizens as backward class in the list of other backward classes and hear complaints of over inclusion or under inclusion of any backward class in such list and tender such advice to the State Government as it deemed proper. The Commission examined the said requests and submitted its report in February, 1994 to the Govt. of Tripura. In its said report, the Commission inter alia recommended the inclusion of 'Manipuri, Bishnupriya Manipuri' against Sl No. 25 of the list of other backward classes for the State of Tripura. The said recommendation of the Commission was accepted by the Government of Tripura and by Memorandum dated 27th April '94 the Govt. of Tripura notified 42 communities as other backward classes in Tripura and in the said list 'Manipuri, Bishnupriya Manipuri' were included against Sl. No. 25. But representations were received for modification of the said list of other backward classes and after considering the said representation the Government of Tripura issued the notification dated 8th March '95 modifying the list of other backward classes as notified by the Memorandum dated 27th April '94. In the said modified list in the notification dated 8th March '95 'Bishnupriya Manipuri' was included against Sl No. 9 and 'Manipuri' was included against Sl. No. 26. Aggrieved, the petitioner moved the Supreme Court in a Writ Petition (Civil) No. 811/95 but by order dated 3.1.96 the Supreme Court dismissed the Writ Petition as withdrawn with liberty to the petitioner

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to move the High Court if advised. The petitioner has thus filed the present Writ Petitions before this Court under Article 226 of the Constitution. In Civil Rule No.1439/96, the petitioner has prayed for a direction on the respondent No.1 not to recognise any language or community with the momenclature 'Bishnupriya Manipuri' or 'Manipuri Bishnupriya' and for a declaration that the Manipuri language or community is in no way connected with the Bishnupriya community. The petitioner has also prayed for a direction restraining the respondents ^{from} using the word 'Manipuri' as prefix or suffix to the word Bishnupriya for any purpose whatsoever. The petitioner has also prayed for quashing the Memorandum dated 27th April '94 and the notification dated 8.3.95 of the Government of Tripura in which 'Bishnupriya Manipuri' has been included in the list of other backward classes for Tripura. In Civil Rule No.4499/96, the petitioner has prayed for quashing the report of the Commission submitted in February '94 on the basis of which the 'Bishnupriya Manipuri' are included in the list of other backward classes by the Government of Tripura in the impugned Memorandum dated 27.4.94 and the impugned notification dated 8.3.95.

2. Mr B.K.Das, learned counsel for the petitioner, submitted that in Paragraph 117 of the majority judgment of the Supreme Court in *Indra Sawhney Vs Union of India* (Supra) as reported in AIR, 1993 SC 477, the Supreme Court directed constitution of statutory body for examining the complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other backward classes. But the Government of Tripura instead ^{of} creating a statutory body

has created a body by an executive order for examining such complaints. Hence, the very creation of ^{Ka} Commission and the report submitted by the Commission is liable to be quashed. Mr B.P.Kataki, learned Govt. Advocate, Tripura on the other hand, submitted that in the said Paragraph 117 of the majority judgment of the Supreme Court no direction was issued by the Supreme Court for creation of a statutory body. The Govt. therefore, could set up a Commission by an executive order to examine complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other backward classes.

3. Paragraph 117 of the judgment of B.P.Jeevan Reddy, J at Page 579 in Indra Sawhney Vs. Union of India (Supra) as reported in AIR 1993 SC 477 is quoted herein-below:

"Desirability of a permanent statutory body to examine complaints of over-inclusion/under inclusion.

117. We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other backward classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reason therefor. Even if any new class/ group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first

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instance and action taken on the basis of its recommendation. The body must be composed of experts in the field both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under clause(4) of Art.16 itself- or under Art.16(4) read with Article 340-as a concomitant of the power to identify and specify backward class of citizens in whose favour reservations are to be provided. We direct that such a body be constituted both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of O.B.Cs. As suggested by Chandrachud, C.J. in Vasant Kumar (AIR 1985 SC 1495), there should be a periodic revision of these lists to exclude those who have ceased to be backward or for inclusion of new classes, as the case may be."

9- In the aforesaid Paragraph 117 of the majority judgment as quoted above ^{it} has been held that the body for examining the complaints of wrong inclusion or non-inclusion of groups, classes and sections in the list of other backward classes can be created under Clause 4 of Article 16 of the Constitution itself or under Article 16(4) read with Article 340 of the Constitution. No where in the said Paragraph 117 of the judgment has it been held that such a body is to be created only by a statute and not by an executive order. Rather, in Paragraph 55 of the said majority

Judgment it has been held that the provision for reservation under Article 16(4) of the Constitution need not necessarily be made by the Legislature and may be made by an executive order. Hence, the contention of Mr Das that by the judgment in *Indra Sawhney Vs Union of India* the Supreme Court only directed creation of a statutory body for examining the complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other backward classes has no merit.

4. It was next contended by Mr Das that the State Govt. had no power to constitute a body for examining the complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other backward classes and that it was only the President who had power under Article 340 of the Constitution to appoint a Commission for examining such complaints. He relied on the aforesaid Para 117 of the judgment in *Indra Sawhney Vs Union of India* in support of this contention. We have today delivered judgment in C.R.No 3146/96 which was heard analogously with these Writ Petitions and in the said judgment we have rejected the contention of Mr. Das that a body for examining complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other backward classes can only be created by the President under Article 340 of the Constitution. We have held in the said judgment delivered today that such a body can also be created under Clause 4 of Article 16 itself as indicated in the aforesaid Paragraph 117 of the majority judgment of the Supreme Court in *Indra Sawhney Vs Union of India* (Supra) either by law made by the State Legislature or by an executive order of the State Government.

5. Mr.Das then challenged the report of the Commission. He submitted that the criteria for identifying backward classes as laid down by the Supreme Court in Indra Sawhney Vs Union of India have not been followed by the Commission. He contended that the Commission instead of following the criteria as laid down by the Supreme Court in Paragraph 122 of the judgment at Page 587 as reported in AIR 1993 SC 477 has adopted the criteria of caste for identifying the backward classes for inclusion in the list of other backward classes. Mr.Katakey, learned Govt.Advocate, on the other hand, contended that the criteria as laid down by the Supreme Court in Indra Sawhney Vs Union of India have been adopted by the Commission.

6. In Paragraph 700 at Page 761 of the judgment of the Supreme Court in Indra Sawhney Vs Union of India as reported in AIR 1993 SC 477 the conclusions in the said judgment have been summed up. It has been held that the sine qua non for exercising the power under Article 16(4) of the Constitution is adequate representation in public services. It has been further held that identification of a group or collectivity by any criteria other than caste such as, occupation cum social cum educational cum economic criteria ending in caste may not be invalid. A reading of the impugned report of the Commission would show that occupation cum social cum educational cum economic criteria along with caste have been adopted by the Commission for the purpose of identifying backward classes to be included in the list of other backward classes for Tripura. Para 7.1 of Chapter VII of the report of the Commission is extracted herein below:-

"7.1 At the outset, we would like to mention that according to the terms of reference, our recommendations cover only identification of O.B.C.S. in the State. The approach adopted by us in determining the backward

classes has been discussed at length in Chapter III and V. To recapitulate, in determining backward classes, though higher weightage has been given on caste, on being considered one of the vital factors in determining social and educational backwardness, but along with the caste criteria, we have taken into consideration some other factors, like stigmas of low occupation, occupation-cum-income, untouchability, inadequate representation in public services. In addition, the Commission also used its personal knowledge for the purpose of categorising a particular group as backward."

Thus the Commission has considered various factors to identify the backward classes for the purpose of inclusion in the list of other backward classes and not just the caste criteria as has been submitted by Mr. Das. The challenge to the report of the Commission on the ground that the criteria laid down by the Supreme Court in Indra Sawhney Vs Union of India (Supra) have not been followed by the Commission while making its recommendation therefore fails.

7. Mr Das, learned counsel for the petitioner, finally submitted that the impugned memorandum dated 27.4.94 and the impugned notification dated 8.3.95 of the Government of Tripura describing the Bishnupriya community as 'Bishnupriya Manipuri' are arbitrary and illegal because the Manipuri community and the Bishnupriya community have separate and distinct origin and language and that the Bishnupriya community is not part of the Manipuri community. He vehemently argued that the word 'Manipuri' cannot be used either as prefix or suffix to the word 'Bishnupriya'. Mr. M. Singh learned counsel appearing for the State of Manipur, supported the said contention of Mr. Das, learned counsel for the petitioner and contended that this court/declare that

Bishnupriya are not part of the Manipuri community so that the on going dispute between the Manipuri community and the Bishnupriya community is resolved once and for all.

8. Mr.N.Dutta, learned counsel for the Bishnupriya Manipuri Sahitta Sava, on the other hand, submitted that the court is not equipped with the knowledge or expertise to decide the dispute as to whether the Bishnupriya community is part of the Manipuri community or not and, therefore, should avoid declaring that the word 'Manipuri' cannot be used by the respondents either as a prefix or suffix to the word 'Bishnupriya'. Mr.B.P.Katakey, learned Govt. Advocate relied on the averments made in the counter affidavit filed on behalf of the State of Tripura to show as to why in the impugned memorandum and impugned notification of the State Government^{ka} expression 'Bishnupria Manipuri' has been used.

9. We have gone through the counter affidavit filed on behalf of the State of Tripura and we find that in Para 13 of the said counter affidavit it has been stated:-

" The Government of Tripura has been aware of the linguistic difference of these two groups of the Manipuris i.e. the Meiteis and the Bishnupriyas and as such the Respondent No.7 State(Tripura) specifically mentioned both Manipuri and Bishnupriya Manipuri community at Sl.No.25 in its first OBC list published vide Annexure VI to the writ petition. But on protest of one group(the Meitei. Manipuri) against the other(Bishnupriya Manipuri), the Government of Tripura put these 2 groups in the State OBC list at two separate serial number- one at Sl.No.9 and the other at Sl.No.26 as per Annexure VI to the writ petition."

Thus in the said Paragraph of the counter affidavit the Govt. of Tripura has recognised and held that there was a linguistic difference between the Manipuris and Bishnupriya Manipuris and has put the two groups in two separate Sl.Nos, the Bishnupriya Manipuri against Sl.No.9 and Manipuri against Sl.No.26 of the list of other backward classes. The Government of Tripura therefore has treated the two communities as separate backward classes for the purpose of reservation under Article 16(4) of the Constitution.

10. In these Writ Petitions which relate to reservation under Article 16(4) of the Constitution in favour of backward classes in public services in the State of Tripura, the Court is not concerned as to whether the people speaking Bishnupriya language are part of Manipuri community or not. In our judgment delivered today in Civil Rule No.3146/96, we have given our reasons as to why in exercise of our power under Article 226 of the Constitution we are not inclined to declare that the word 'Manipuri' cannot be used as prefix or suffix to the word 'Bishnupriya'. For the reasons given in the said judgment in Civil Rule No.3146/96 we are also not inclined to issue a declaration in these writ petitions that the word 'Manipuri' cannot be used as prefix or suffix to the word 'Bishnupriya' or to issue a direction restraining the respondents from using the word 'Manipuri' as prefix or suffix to the word 'Bishnupriya' or to quash the impugned Memorandum or the impugned notification of the Government of Tripura describing the people speaking Bishnupriya language as 'Bishnupriya Manipuri'.

In the result, these writ petitions are dismissed. But considering the facts and circumstances of the case the parties shall bear their own costs.